Supreme Court, U.S.
FILED
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IN THE

Supreme Court of the United States

October Term, 1994

CITIZENS BANK OF MARYLAND,

Petitioner,

v.

DAVID STRUMPF,

Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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APPENDIX A

In Re: DAVID STRUMPF, Debtor.

CITIZENS BANK OF MARYLAND,
Plaintiff-Appellee,

v.

DAVID STRUMPF, Defendant-Appellant.

No. 92-1519

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

37 F.3d 155

February 2, 1993, Argued
October 13, 1994, Decided

COUNSEL: Argued: John Randall Owen, Jr., JOHN R. OWEN, JR. & ASSOCIATES, P.C., Hyattsville, Maryland, for Appellant.

Argued: Matthew A. Egeli, HARTMAN & CRAIN, Annapolis, Maryland, for Appellee.

On Brief: C. Edward Hartman, III, HARTMAN & CRAIN, Annapolis, Maryland, for Appellee.

JUDGES: Before RUSSELL and WIDENER, Circuit Judges, and CHAPMAN, Senior Circuit Judge. Judge Widener wrote the opinion, in which Judge Russell and Senior Judge Chapman concur.

WIDENER, Circuit Judge:

This case presents an issue of first impression on the same facts in the courts of appeal, although the Third and Eighth Circuits have considered similar fact situations, as have we. It is whether a bank violates the automatic stay of 11 U.S.C. § 362(a) by placing an administrative hold on a debtor's account while seeking relief from the stay to exercise its right of setoff. The United States Bankruptcy Court for the District of Maryland held Citizens Bank of Maryland (Citizens) in contempt for violating the automatic stay and awarded damages to Strumpf under 11 U.S.C. § 362(h). See Citizens of Md. v. Strumpf, 138 B.R. 792 (D. Md. 1992). On appeal, the United States District Court for the District of Maryland reversed. See 138

B.R. at 795. Strumpf now appeals and we reverse.

I.

On November 28, 1989, Citizens loaned Strumpf $5,068.75 on a note as an unsecured consumer loan to be repaid in 24 monthly installments. See 138 B.R. at 792. Upon default, the note provided Citizens with the right to immediately accelerate the amount due, the right to recover attorney's fees incurred in collection, and the right of setoff. See 138 B.R. at 792. On January 25, 1991, Strumpf filed a Chapter 13 bankruptcy petition. See 138 B.R. at 792. At the time of filing, Strumpf had $11,279.86 in a checking account with Citizens, and the note was in default because Strumpf had failed to make scheduled payments. See 138 B.R. at 792. On March 20, 1991, the

bankruptcy court confirmed Strumpf's repayment plan.

On October 7, 1991, Citizens filed a motion for relief from the automatic stay and for setoff and placed an administrative hold on $3,500 in Strumpf's checking account, $3,250.48 being due on the note at the time. See 138 B.R. at 792-93. On October 9, 1991, Strumpf filed a motion to hold Citizens in contempt for violating the automatic stay of § 362(a). See 138 B.R. at 793. The bankruptcy court reserved ruling on Citizens' motion on November 4, 1991, and then granted Strumpf's motion on November 13, awarding him attorney's fees of $500, punitive damages of $375, and nominal damages of $25. See 138 B.R. at 793. On December 2, the bankruptcy court granted Citizens' motion for relief from the stay

and authorized it to exercise its right of setoff. See 138 B.R. at 793. Citizens, however, was unable to set off its loan because Strumpf had withdrawn all funds from his checking account after Citizens removed the administrative hold. See 138 B.R. at 793.

II.

The right of setoff may arise contractually or under state law, see 4 Collier on Bankruptcy ¶ 553.06 (15th ed. 1992), and it allows a creditor to apply one mutual debt against another to avoid "the absurdity of making A pay B when B owes A." Studley v. Boylston Nat'l Bank, 229 U.S. 523, 528, 33 S. Ct. 806, 808, 57 L. Ed. 1313 (1913). While the Bankruptcy Code preserves a creditor's right of setoff that arose before the filing of a petition in bankruptcy, see 11 U.S.C. §

553(a), the Code stays the exercise of the right of setoff by making it subject to the automatic stay of § 362(a).* See 11 U.S.C. § 362(a)(7). To exercise its right of setoff, a creditor must obtain relief from the automatic stay by filing a motion with the bankruptcy court. See 11 U.S.C. § 362(d). If the creditor fears that the property subject to the motion will suffer irreparable damage before notice and hearing may be had, the creditor may even file an ex parte motion under § 362(f). See 11 U.S.C. § 362(f). Any relief from the automatic stay rests within the sound discretion of the

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* The Code also grants creditors with a valid right of setoff two other rights. Section 506(a) gives a creditor a secured claim to the extent of the amount subject to setoff. See 11 U.S.C. § 506(a). Section 542(b) excepts a creditor from turning over property to the debtor's estate to the extent of the setoff. See 11 U.S.C. § 542(b).

bankruptcy court. See Small Business Admin. v. Rinehart, 887 F.2d 165, 169 (8th Cir. 1989).

If the debtor learns of the motion for relief from the stay, however, the debtor may defeat the creditor's right of setoff by removing all funds in the creditor's possession before the creditor can obtain relief from the stay. Therefore, even if the creditor is granted relief from the automatic stay, the creditor will have nothing with which to set off the debt owing it. As the district court recognized, this scenario is known as the "banker's dilemma": "[W]hen a bankruptcy is filed, a bank claiming a right of set-off in a debtor's account may be faced with a dilemma - whether it should turn over proceeds of [the] debtor's account or whether it

should exercise its set-off rights in violation of the automatic stay." Citizens Bank, 138 B.R. at 702, quoting from In Re Bass Mechanical Contractors, Inc., 84 B.R. 1009, 1022 (Bankr. W.D. Ark. 1988). Recognizing this dilemma, some bankruptcy and district courts have held that pending a motion for relief from the stay, a creditor asserting a right of setoff may place an administrative hold on a debtor's account without violating the automatic stay of § 362(a). See Citizens Bank, 138 B.R. at 793 (holding same and collecting cases). Relying on this body of case law, Citizens placed an administrative hold on Strumpf's account and filed a motion for relief from the stay. See 138 B.R. at 794.

While we understand the dilemma that Citizens and other similarly situated creditors face, we cannot overlook the fact that the Code does not authorize such action, and is quite to the contrary. Setoff is explicitly within the terms of section 362(a)(7) which stays a creditor from exercising its right of setoff unless and until the creditor obtains relief from the stay. In United States v. Reynolds, 764 F.2d 1004 (4th Cir. 1985), we held that a freeze by the Internal Revenue Service (IRS) on a debtor's tax refund "was a setoff subject to the automatic stay and that the IRS violated the stay in retaining the funds." 764 F.2d at 1006-07. Based on this holding, we are of opinion that an administrative hold is tantamount to the exercise of a right of setoff and thus

violates the automatic stay of § 362(a)(7). See 764 F.2d at 1006-07. As well as Rinehart, supra, United States v. Norton, 717 F.2d 767, 773 (3d. Cir. 1983) — and In Re Penn Central Transportation Company, 453 F.2d 520 (3d. Cir. 1972) (a railway reorganization under the Bankruptcy Act) are on slightly different facts but are fully in accord with our decision. Whether the creditor actually offsets the debtor's account or places a hold on the debtor's account, both effectively deprive the debtor of the use of the funds pending the outcome of the motion for relief from the stay. See Rinehart, 887 F.2d at 168.

Citizens attacks this holding, the same one reached by the bankruptcy court, claiming that Reynolds is distinguishable and that equating an administrative hold

with the exercise of the right of setoff renders the right of setoff unenforceable and effectively repeals § 553(a). Citizens states that, unlike the IRS in Reynolds, Strumpf's plan made no provision to pay Citizens as a secured creditor despite its status as a secured creditor under § 506(a). Furthermore, Citizens claims that, unlike the IRS, it did not intend to keep the hold on Strumpf's account until the end of his Chapter 13 plan.

We are not persuaded by Citizens' efforts to distinguish Reynolds. While the fact that Citizens was not provided for as a secured creditor in Strumpf's plan might be taken into account in deciding whether the bankruptcy court should grant Citizens relief from the automatic stay under § 362(d)(1), it has

no bearing on whether Citizens acted properly in placing an administrative hold on Strumpf's account. We are further of opinion that the length of time a creditor intends to maintain a hold is not relevant to whether a hold is tantamount to a setoff. In Reynolds the IRS intended to hold the funds until the Chapter 13 plan was closed because the bankruptcy court had denied it relief from stay due to its status as a secured creditor with adequate protection. See 764 F.2d at 1007. In this case, Citizens intended to hold Strumpf's account only until it could get relief from stay. These cases indicate to us that the length of time a creditor intends to maintain the hold is determined by that same creditor's ability to get relief from the automatic stay and exercise its

right of setoff, so the length of time is not relevant to whether a hold is tantamount to a setoff.

We likewise are not persuaded by Citizens' claims that our holding renders the right of setoff unenforceable and effectively repeals § 553(a). Statutory construction begins with the literal language of a statute, see United States v. Turkette, 452 U.S. 576, 580, 101 S. Ct. 2524, 2527, 69 L. Ed. 2d 246 (1981), and if the language is clear and unambiguous our task is at an end unless a literal reading of the statute contravenes the clearly expressed legislative intent of Congress. See Russello v. United States, 464 U.S. 16, 20, 104 S. Ct. 296, 299, 78 L. Ed. 2d 17 (1983). While the banker's dilemma may allow a debtor to defeat a creditor's

right of setoff, the clear and unambiguous language of § 362(a) produces this result. Furthermore, our holding does not contravene any clearly expressed legislative intent of Congress:

> The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

House Report No. 95-585, 95th Cong., 1st Sess. 340-2 (1977); Senate Report No. 95-989, 95th Cong., 2d Sess. 54-55 (1978); reprinted in 1978 U.S.C.C.A.N. 5787 at 5840 and 6296-7. "If a bank could freeze the debtor's accounts upon the filing of a petition in bankruptcy, the debtor's chances for successful

rehabilitation would be substantially diminished." See Reynolds, 764 F.2d at 1007 (quoting Norton, 717 F.2d at 773).

III.

As for the bankruptcy court's award of attorney's fees, punitive damages, and nominal damages, we are of opinion that such an award was appropriate and not an abuse of discretion. See Budget Service Co. v. Better Homes of Va., 804 F.2d 289, 292-93 (4th Cir. 1986). To award damages under § 362(h) the bankruptcy court need only find a willful violation of the automatic stay of § 362(a). To constitute a willful act, the creditor need not act with specific intent but must only commit an intentional act with knowledge of the automatic stay. See Budget Service, 804 F.2d at 292-293; In Re Atl. Business & Community Corp., 901 F.2d 325, 329 (3d

Cir. 1990). In this case there is no doubt that Citizens had knowledge of the stay when it placed the hold on Strumpf's account because the placing of the hold was an attempt to buy time while seeking relief from the automatic stay.

IV.

We are thus of opinion that Citizens' administrative hold on Strumpf's account violated the automatic stay provisions of § 362(a)(7) and that the bankruptcy court did not abuse its discretion by finding Citizens had violated the automatic stay and awarding damages.

Accordingly, we reverse the decision of the district court and remand with instructions to reinstate all of the decision of the bankruptcy court except that part which may have held Citizens in

contempt of court. That part of the decision of the district court with reference to holding Citizens in contempt of court is not appealed by Strumpf (Brief, p.7-8), although that part finding Citizens had not violated § 362(a)(7) and not awarding damages under § 362(h) was appealed. In all events, the finding of contempt was surplusage. See Budget Service Company, 804 F.2d 289, 293, and n.4.

REVERSED AND REMANDED WITH INSTRUCTIONS

APPENDIX B

CITIZENS BANK OF MARYLAND, Appellant

v.

DAVID STRUMPF, Appellee

Civil No. HAR-91-3692

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

138 B.R. 792

March 27, 1992, Decided
March 30, 1992, Filed

COUNSEL: Attorney for Appellant, C. Edward Hartman, III, Annapolis, MD 21401.

Attorney for Appellee, John R. Owen, Jr., Hyattsville, MD 20782.

JUDGES: Hargrove

MEMORANDUM OPINION

Currently before this Court is Citizens Bank of Maryland's ("Citizen's Bank") appeal from the United States Bankruptcy Court for the District of Maryland. The issues have been fully

briefed, and no hearing is deemed necessary.

The first issue presented to this Court is whether the Bankruptcy Court erred as a matter of law in holding that the Appellant violated the automatic stay of 11 U.S.C. § 362(a) when it placed an administrative hold on the Appellee's checking account pending the Bankruptcy Court's disposition of the Appellant's Motion for Relief from Automatic Stay and for Setoff. The second issue before this Court is whether the Bankruptcy Court erred in finding the Appellant in contempt and assessing attorney's fees, punitive damages, and nominal damages under 11 U.S.C. § 362(h).

FACTS

Citizens Bank loaned Strumpf $5,068.75 pursuant to an unsecured

consumer loan note ("Note") on November 28, 1989. Strumpf agreed to pay off the loan (including interest) in twenty-four monthly installments. The Note provided for the immediate acceleration of the amount due upon default, and for the payment of attorney's fees upon referral of the matter to an attorney for collection. The note further provided for the right of setoff.

On January 25, 1991, Strumpf filed a Petition for Relief under Chapter 13 of Title 11, U.S.C., in the Bankruptcy Court. (Case No. 91-40389PM). At the time of the filing of the Petition, Strumpf had a checking account with Citizens Bank, containing $11,279.86. Because Strumpf had failed to make scheduled payments, Citizens Bank declared the Note in default.

On October 7, 1991, Citizens Bank filed a Motion for Relief from Automatic Stay and for Setoff against Strumpf. In the Motion, Citizens Bank sought permission to setoff the amounts owed on the Note against the amounts then in Strumpf's checking account. Simultaneous with filing the Motion for Relief from Automatic Stay and for Setoff, Citizens Bank placed an administrative hold on $3,500 in Strumpf's checking account,[1] pending a ruling by the Bankruptcy Court on the Motion. Citizens Bank took this action to prevent Strumpf from removing funds to which Citizens Bank claimed a setoff right.

On October 9, 1991, Strumpf filed a Motion to hold Citizens Bank in contempt

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[1] The amount due on the Note as of that date, including attorney's fees, was $3,250.48.

for violation of the automatic stay of 11 U.S.C. § 362(a), when it placed the administrative hold on the checking account. On November 4, 1991, the Bankruptcy Court, Judge Paul Mannes presiding, held a hearing on Citizens Bank's Motion for Relief from Automatic Stay and for Setoff, and reserved ruling on the Motion. On November 13, 1991, Judge Mannes held a hearing on Strumpf's Contempt Motion, granted the Motion, and ordered Citizens Bank to pay counsel fees of $500.00, punitive damages of $375.00, and nominal damages of $25.00. This ruling was set forth in a written Order on November 21, 1991.

Later, in a written Order entered December 2, 1991, Judge Mannes granted Citizens Bank's Motion for Relief from Automatic Stay and Setoff. Citizens Bank,

in compliance with Judge Mannes contempt ruling, had lifted the administrative hold on the checking account. Before the granting of Citizens Bank's Motion for Relief from Automatic Stay and Setoff, Strumpf had removed all funds from the checking account.

I.

Citizens Bank cites a substantial body of persuasive caselaw for the proposition that a bank's placing of an administrative hold on a debtor's account pending the disposition of a motion asserting the bank's right of setoff is not a violation of the automatic stay. See e.g., Bank of America Nat'l Trust & Sav. Ass'n v. Edgins, 36 B.R. 480 (9th Cir. Bankr. App. 1984); Rio v. Army Aviation Center Fed. Credit Union, 82 B.R. 138 (M.D. Ala. 1986); Stann v. Mid.

Am. Credit Union, 39 B.R. 246 (D. Kan. 1984); In re Archer, 34 B.R. 28 (B.C. N.D. Tex. 1983); In re Bass Mechanical Contractors, Inc., 84 B.R. 1009 (Bankr. W.D. Ark. 1988); Kenney's Franchise Corp. v. Cent. Fidelity Bank, NA, 22 B.R. 747 (W.D. Va. 1982); In re Williams, 61 B.R. 567 (Bankr. N.D. Tex. 1986); In re Hoffman, 51 B.R. 42 (Bankr. W.D. Ark. 1985); In re Gazelle, Inc., 17 B.R. 617 (Bankr. W.D. Wis. 1982); and In re Carpenter, 14 B.R. 405 (Bankr. M.D. Tenn. 1981).

The notion of the "banker's dilemma" supports the argument that banks have a right to place an administrative hold on a debtor's account pending further disposition of the funds:

> [W]hen a bankruptcy is filed, a bank claiming a right of set-off in a debtor's account may be faced with a

> dilemma--whether it should turn over proceeds of [the] debtor's account or whether it should exercise its set-off rights in violation of the automatic stay. To avoid this dilemma, many courts have allowed banks to place an "administrative freeze" on a debtor's account pending further disposition of the funds without violating the automatic stay. The placing of an administrative freeze on a debtor's account offers a way to preserve the debtor's account and is not a direct or indirect attempt to improve the bank's right to a distribution of assets.

Citizens Bank found itself in precisely this banker's dilemma until it placed an administrative hold on the debtor's account. Citizens Bank was not exercising its right of setoff without obtaining prior relief from the automatic stay--rather, it was acting to preserve the debtor's account until the Bankruptcy Court ruled on the Motion for Relief from Automatic Stay.

The Bankruptcy Court relied on the cases of United States v. Reynolds, 764 F.2d 1004 (4th Cir. 1985), and United States v. Norton, 717 F.2d 767 (3rd Cir. 1983), in holding that Citizens Bank's placing of an administrative hold on Strumpf's checking account was a violation of the automatic stay. Citizens Bank argues, however, that both Reynolds and Norton, are distinguishable from the case at bar. First, in those cases the Courts held that the United States, as a creditor, was not entitled to setoff income tax deficiencies which were scheduled to be paid in the debtors' confirmed Chapter 13 reorganization plans. In the case at bar, no provision was made in Strumpf's Chapter 13 plan to pay Citizens Bank's claim as a secured creditor. As such, the reorganization

plan did not provide "adequate protection" for the Bank's security interest.

More importantly, in both Reynolds and Norton, the United States intended to hold the frozen funds until the Chapter 13 cases were closed. As such, the Courts viewed the retention of funds by the IRS as the equivalent of a setoff. In the case at bar, by contrast, the administrative hold was merely designed to hold the funds until the Bankruptcy Court ruled on the disposition of the funds. Had Citizens Bank sought to retain the funds without court approval until the entire Bankruptcy proceeding was closed, it would appear that the Bank was using the funds as a setoff, in violation of the automatic stay. However, Citizens Bank, upon finding itself in the banker's

dilemma, acted reasonably by simply freezing the checking account funds only until the Bankruptcy Court ruled on its Motion for Relief from Automatic Stay and for Setoff.[2]

Further, it is noteworthy that in the case of Craddock-Terry Shoe Corp. v. Crestar Bank, 91 B.R. 392 (Bankr. W.D. Va. 1988), a case from the same district as Reynolds, the Court held, relying on

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[2] The Court in Reynolds addresses the concern that by unilaterally freezing funds, "the funds would become unavailable for distribution to other creditors or for use by the debtor in a Chapter 13 plan, thus making it much less likely that the debtor could be rehabilitated." Id. at 1007. The Court notes that this problem would occur if the bank were using the money in the account for setoff without the authority of the Bankruptcy Court. In the case at bar, however, the Bank was merely awaiting instructions from the Bankrutpcy Court, and obviously needed to freeze the funds such that the ultimate ruling of the Bankruptcy Court on the Bank's Motion could be carried out. As soon as the Bankruptcy Court ruled on the Bank's Motion, the Bank could have either lifted the freeze or exercised its setoff rights, as directed by the Bankruptcy Court.

Kenney's Franchise Corp. v. Cent. Fidelity Bank, 22 B.R. 747 (W.D. Va. 1982), that a bank's action in placing an administrative freeze on a debtor's account pending the resolution of its right of setoff was not a violation of the automatic stay.

Citizens Bank argues that it was relying on the substantial body of caselaw supporting its right to place an administrative hold on Strumpf's checking account pending the Bankruptcy Court's resolution of the Motion for Relief from Automatic Stay and for Setoff. In ruling that the administrative hold violated the automatic stay, the Bankruptcy Court effectively extinguished the Bank's right to setoff because, by the time the Motion for Relief from Automatic Stay and for Setoff was ruled upon, the Bank no longer

possessed any of Strumpf's money. Citizens Bank asserts that the Bankruptcy Court's ruling effectively rendered the common law right of setoff unenforceable.

The Bankruptcy Court ruled on the Contempt Motion prior to ruling on the Motion for Relief from Automatic Stay and for Setoff. The ironic result for Citizens Bank was that it was held in Contempt, was later granted its Motion for Relief from Automatic Stay and for Setoff, but could not exercise its right to setoff because (as predicted by Citizens Bank) Strumpf had removed the money from the checking account. This series of events rendered the Bankruptcy Court's ultimate granting of Citizens Bank's Motion meaningless.

The Court finds that the placing of an administrative hold on an account

pending the Bankruptcy Court's ruling on the Bank's Motion for Relief from Automatic Stay and for Setoff does not equate to a setoff as a matter of law. In fact, permitting the Bank to freeze the funds until such time as the Court rules on the Bank's Motion for Relief from Automatic Stay and for Setoff is the only sensible procedural approach under these circumstances.

II.

Given the existing law supporting the Bank's right to freeze the account, and given the "catch-22" nature of the circumstances for the Bank in this case, it would be patently unfair to uphold the Bankruptcy Court's finding of contempt. Citizens Bank has noted that the issue of whether a bank may impose an administrative hold on a debtor's

checking account has not been addressed by this Court in a published decision, and that any ambiguity in the law should be resolved in favor of the party charged with contempt. Int'l Brotherhood of Teamsters, etc. v. W. Pa. Motor Carriers Ass'n, 660 F.2d 76, 82 (3rd Cir. 1981). In any event, the Court agrees with Citizens Bank's interpretation of the applicable law, and as such, the Bankruptcy Court's finding of contempt cannot be upheld. Accordingly, the Bankruptcy Court's finding of contempt and assessment of attorney's fees, punitive damages, and nominal damages against Citizens Bank under 11 U.S.C. § 362(h) must be reversed. It will be so ordered.

3/27/92 Date

John R. Hargrove
United States District Judge

ORDER

In accordance with the foregoing Memorandum Opinion, IT IS, this 27th day of March, 1992, by the United States District Court for the District of Maryland, hereby ORDERED:

1. That the November 20, 1991 Order of the Bankruptcy Court for the District of Maryland, finding Appellant in Contempt for a violation of the automatic stay of 11 U.S.C. § 362(a), and awarding sanctions under 11 U.S.C. § 362(h), BE and the same hereby IS REVERSED.

2. That the Clerk of the Court CLOSE this case;

3. That the Clerk of the Court mail copies of this Order and the accompanying Memorandum Opinion to the Honorable Paul Mannes and all parties of record.

John R. Hargrove
United States District Judge

APPENDIX C

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
AT ROCKVILLE

IN RE:	:
	:
DAVID STRUMPF	:
	:
Debtor	:
DAVID STRUMPF	:
	:
Movant	:
	:
vs.	:
	:
CITIZENS BANK OF MARYLAND	:
	:
Respondent	:

Case No. 91-4-0389-PM
Chapter 13

ORDER FINDING RESPONDENT IN CONTEMPT
AND AWARDING SANCTIONS

This matter is before the court upon the motion of the debtor to hold Citizens Bank of Maryland in contempt, the response of Citizens Bank, respondent, and after a hearing thereon and the court

having considered the memoranda of the parties and the arguments in open court, and the court having stated its findings of facts and conclusions of law on the record at the conclusion of the hearing, and the court finding that the action of the said respondent in placing an administrative hold on the checking account of the debtor was a violation of the automatic stay of 11 U.S.C. § 362(a), thereby entitling debtor to damages under 11 U.S.C. § 362(h), it is, this 20 day of November, 1991, by the United States Bankruptcy Court for the District of Maryland,

ORDERED That the debtor is allowed counsel fees for the prosecution of the contempt action in the sum of $500.00; and it is further

ORDERED That the debtor is allowed punitive damages in the sum of $375.00 against the respondent; and it is further

ORDERED That debtor is allowed nominal damages in the sum of $25.00; and it is further

ORDERED That payment of all the foregoing is to be made by respondent to the debtor, in care of his counsel of record, on or before the 11th day of December, 1991.

/s/ Paul Mannes
Chief Judge, United States
Bankruptcy Court for the
District of Maryland

ENTERED: November 21, 1991

cc: John R. Owen, Jr.
C. Edward Hartman III
David Strumpf
Thomas Lackey

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
November 8, 1994

No. 92-1519
BK-91-4038
CA-91-3692-HAR

In Re: DAVID STRUMPF
Debtor

CITIZENS BANK OF MARYLAND

Plaintiff - Appellee

v.

DAVID STRUMPF

Defendant - Appellant

FIRST NATIONAL BANK OF MARYLAND;
NATIONSBANK OF NORTH CAROLINA, N.A.;
NATIONSBANK

Amici Curiae

On Petition for Rehearing With Suggestion
for Rehearing In Banc

The appellee's petition for rehearing and suggestion for rehearing in

banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,

/s/ Bert M. Montague
CLERK

APPENDIX E

11 U.S.C. § 362

§ 362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)), operates as a stay, applicable to all entities, of --

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the

debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

* * * * * * * * * *

(e) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court,

after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be commenced not later than

thirty days after the conclusion of such preliminary hearing.

§ 363. Use, sale, or lease of property

(a) In this section, "cash collateral" means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

§ 506. Determination of secured status

(a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such

disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 542

§ 542. Turnover of property to the estate

* * * * * * * * * *

(b) Except as provided in subsection (c) or (d) of this section, an entity that owes a debt that is property of the estate and that is matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the trustee, except to the extent that such debt may be offset under section 553 of this title against a claim against the debtor.

§ 553. Setoff

(a) Except as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case, except to the extent that --

(1) the claim of such creditor against the debtor is disallowed other than under section 502(b)(3) of this title;

(2) such claim was transferred, by an entity other than the debtor, to such creditor--

(A) after the commencement of the case; or

(B)(i) after 90 days before the date of the filing of the petition; and

(ii) while the debtor was insolvent; or

(3) the debt owed to the debtor by such creditor was incurred by such creditor--

(A) after 90 days before the date of the filing of the petition;

(B) while the debtor was insolvent; and

(C) for the purpose of obtaining a right of setoff against the debtor.

(b)(1) Except with respect to a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(14),,[1] 365(h)(2), or

[1]So in original.

365(i)(2) of this title, if a creditor offsets a mutual debt owing to the debtor against a claim against the debtor on or within 90 days before the date of the filing of the petition, then the trustee may recover from such creditor the amount so offset to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of--

(A) 90 days before the date of the filing of the petition; and

(B) the first date during the 90 days immediately preceding the date of the filing of the petition on which there is an insufficiency.

(2) In this subsection, "insufficiency" means amount, if any, by which a claim against the debtor exceeds

a mutual debt owing to the debtor by the holder of such claim.

(c) For the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.

Respectfully submitted,

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